



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Neil Reiff, Esq.
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.:
1025 Vermont Avenue, NW, Suite 300
Washington, DC 20005

APR 20 2016

RE: MUR 6898
New York State Democratic
Committee and John Gulino in his
official capacity as treasurer

Dear Mr. Reiff:

On November 4, 2014, the Federal Election Commission ("Commission") notified your above-named clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on April 12, 2016, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The College Democrats, a student organization at SBU, organized an event held at SBU on October 22, 2014, in support of Representative Tim Bishop, the incumbent candidate for U.S. Congress from the First Congressional District of New York in the 2014 general election. The event was advertised by a flyer, stating "Please Join Stony Brook College Democrats [for] A Rally In Support of Congressman Tim Bishop Featuring Congressman Steve Israel & Special Guest President Bill Clinton." The flyer sets forth the date, time and location of the event at the Staller Center, a theatre on SBU's campus, and contains a disclaimer, "Paid for by the New York Democratic State Committee." See Compl. at 8.² The flyer was e-mailed to SBU students by the SBU Student Life listserv. See *id.* at 4-7.

The Complaint, filed on October 31, 2014, alleges that SBU paid for the rally, noting that the ticket referred to the event as a "SBU GOTV RALLY." Compl. at 1. The Complaint further alleges that SBU "promoted the rally to its students and the public in various electronic and print media," and made a "contribution of great value" to the Bishop Committee by giving the Committee access to its e-mail list of students "by sending invitations to every single student at the university for this 'partisan campaign event.'" *Id.*

NYSDC denies the allegations in the Complaint. NYSDC asserts that it, not SBU, paid the costs of the event totaling \$12,734.97. NYSDC Resp. at 1. NYSDC provides an invoice in the amount of \$12,734.97 to NYSDC dated October 30, 2014,³ which itemizes total costs of the

² The Complaint's attachments are not numbered; the pagination cited here starts from the beginning of the Complaint.

³ NYSDC asserts that it received the invoice that same day, prior to the filing of the Complaint. NYSDC Resp. at 1, Ex. A.

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services provided by SBU, including the hall fee, SBU police, and parking/security, and a copy of a NYSDC check in the same amount dated November 13, 2014, made payable to SBU.

NYSDC Resp., Ex. A, B. NYSDC disclosed its \$12,734.97 payment to SBU on November 13, 2014, for "GOTV Rally Expenses."⁴

B. Legal Analysis

The two issues raised by the circumstances here are whether the NYSDC made, and the candidate committees received, an excessive contribution and whether the NYSDC and the candidate committees failed to disclose the NYSDC's alleged contributions.

The Act defines "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."⁵ "Anything of value" includes all in-kind contributions and, generally, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.⁶ Examples of such goods or services include, but are not limited to, securities, facilities, equipment, supplies, personnel, advertising services, membership lists and mailings lists.⁷ If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.⁸

NYSDC paid \$12,734.97 for the event. The Commission does not have any information

⁴ NYSDC 2014 Post-General Report at 101 (Dec. 4, 2014).

⁵ 52 U.S.C. § 30101(8)(A)(i).

⁶ 11 C.F.R. § 100.52(d)(1).

⁷ *Id.*

⁸ *Id.*

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to suggest that there were additional costs, other than those paid by NYSDC, or that it paid less than the usual and normal charges for the hall rental, SBU police, parking/security and so forth.⁹ The available information also suggests that SBU made its facilities available in the ordinary course of business. *See* 11 C.F.R. § 114.4(c)(7).

NYSDC disclosed its \$12,734.97 payment to SBU for the costs of the Bishop event as "GOTV Rally Expenses" as a disbursement on Schedule B on its 2014 Post-General Report. By paying the expenses of the event supporting Bishop, NYSDC appears to have provided something of value in connection with Bishop's election, and thus has made an in-kind contribution to the Bishop Committee.¹⁰ NYSDC, a multicandidate political committee, is subject to a \$5,000 contribution limit in giving to any candidate or his or her authorized political committees with respect to any election for Federal office, and no candidate or political committee shall knowingly accept any contribution in excess of this limit.¹¹ The Act also requires political committees to disclose the making and receipt of contributions.¹² In addition to making contributions to candidates subject to the Act's limitations, state party committees and national party committees may each make coordinated party expenditures in connection with the general election of candidates for Federal office in that State who are affiliated with the party.¹³ In the case of House candidates from a state which is entitled to more than one representative,

⁹ The Complaint was filed on October 31, 2014, before NYSDC filed its Post-General Report on December 4, 2014, that disclosed its \$12,734.97 payment to SBU for the costs of the event.

¹⁰ *See* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(d)(1). *See also* Factual & Legal Analysis at 3-4, MUR 5859 (Association of Community Organization for Reform Now) where a state-registered political committee's payment of costs for a rally in support of a federal candidate constituted an in-kind contribution subject to applicable limits and disclosure requirements.

¹¹ 52 U.S.C. §§ 30116(a)(2)(A), 30116(f).

¹² 52 U.S.C. § 30104(b).

¹³ 52 U.S.C. § 30116(d); 11 C.F.R. § 109.32(b).

such as New York State, the coordinated party expenditure limit for 2014 was \$47,200.¹⁴

Accordingly, NYSDC could support Bishop and the Bishop Committee for the 2014 general election by making contributions up to \$5,000 and coordinated party expenditures up to \$47,200.¹⁵ NYSDC, however, appears to have assigned its coordinated party expenditure authority to the DCCC, *see* 11 C.F.R. § 109.33, which had its own \$47,200 expenditure authority with which to support Bishop.¹⁶ *See* 52 U.S.C. § 30116(d); 11 C.F.R. § 109.32(b).

NYSDC did not disclose making any contributions to Bishop, and the Bishop Committee did not disclose the receipt of any such contributions. Nor did NYSDC disclose making any coordinated party expenditures in support of Bishop. Because NYSDC paid \$12,734.97 for the rally, it appears that NYSDC made an excessive contribution to Bishop. Under the circumstances here, including the small amount in violation, we dismissed this matter in an exercise of the Commission's prosecutorial discretion.¹⁷

¹⁴ 11 C.F.R. § 109.32(b)(2)(ii) and (3). *See* http://www.fec.gov/info/charts_441ad_2014.shtml.

¹⁵ At the time of the October 22, 2014, rally for Bishop, the NYSDC could not have made a contribution to Bishop for the June 24, 2014, primary election because the Bishop Committee had no debts from that earlier election. *See* 11 C.F.R. § 110.2(b)(3)(i) (a contribution designated for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election); Bishop Committee 2014 Pre-Primary Report at 2; 2014 July Quarterly Report at 2.

¹⁶ According to the DCCC's disclosure reports, it spent \$86,978 of the combined \$94,400 coordinated party expenditure authority on behalf of Bishop. *See* DCCC 2014 30-Day Post General Report at 127,533-34; 2014 Year End Report at 52,995.

¹⁷ *See Heckler v. Chaney*, 470 U.S. 821 (1985).